

NO. 22,540 ✓

IN THE
United States
Court of Appeals

For the Ninth Circuit

AUTHER G. BARKLEY,
Appellant

v.

UNITED STATES OF AMERICA,
GEORGE D. PATTERSON,
District Director of Internal Revenue,
LESTER R. URETZ,
Chief Counsel of Internal Revenue Service,
and the COMMISSIONER
OF INTERNAL REVENUE,
Appellees

ON APPEAL FROM THE JUDGMENT OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRIEF FOR THE APPELLEES

MITCHELL ROGOVIN,
Assistant Attorney General.
LEE A. JACKSON,
WILLIAM A. FRIEDLANDER,
DAVID ENGLISH CARMACK,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

EDWARD E. DAVIS,
United States Attorney.

RICHARD C. GORMLEY,
Assistant United States Attorney.

FILED

APR 22 1968

B. LUCK CLERK



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FOR THE DISTRICT OF ARIZONA

BRIEF FOR THE APPELLEES

OPINION BELOW

There was no opinion filed by the District Court in this case.

JURISDICTION

The appeal is from a judgment of the United States District Court for the District of Arizona dismissing the appellant's complaint against the United States and certain of its employees for \$100,000,000. The

judgment of the District Court was entered on November 21, 1967. (I-R. 20.) Within sixty days thereafter, on November 27, 1967, a notice of appeal was filed. (I-R. 21.) An amended notice of appeal was filed on November 28, 1967. (I-R. 22.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

QUESTION PRESENTED

Whether the District Court correctly granted the appellees' motion to dismiss the complaint filed against the United States of America, the District Director of the Internal Revenue Service, the Chief Counsel of the Internal Revenue Service, and the Commissioner of Internal Revenue, which asked for \$100,000,000 in damages.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the statutes and Regulations involved will be found in the Appendix, *infra*.

STATEMENT

The appellant's complaint arises from the seizure on September 8, 1967, of his wife's pay check from the McGraw Edison Company as payment of the appellant's and his wife's income tax for the taxable year ending December 31, 1966. (I-R. 3, 11.) A notice of levy, which set forth that the appellant and his wife owed the Government \$323.85 in income taxes for 1966 and had refused to pay it, was sent to the McGraw Edison Company by the District Director of the Internal Revenue Service on August 29, 1967. (I-R. 10.) The appellant, who now has an appeal pending in this Court (No. 22061) for a redetermination of his wife's and his income taxes for the taxable year ending on December 31, 1964, apparently thinks that the money

was seized as taxes for the taxable year 1964. (I-R. 3, 6-9.)

Because of this seizure, the appellant is suing the United States of America, George D. Patterson (District Director of the Internal Revenue Service), Lester Uretz (Chief Counsel of the Internal Revenue Service), and the Commissioner of Internal Revenue (I-R. 1) and requests damages in the amount of \$100,000,000 (I-R. 4).

On November 21, 1967, the District Court granted the defendants-appellees' motion to dismiss the complaint. (I-R. 15, 20.) From this decision, the appellant appeals.

SUMMARY OF ARGUMENT

The District Director correctly dismissed the complaint for failure to set forth a claim upon which relief could be granted. Further, its decision is correct as to the United States because the District Court has power to entertain a suit against the United States only when it has given its consent to be sued and the appellant has failed to show where it has given such consent. As to the District Director for the Internal Revenue Service the lower court's decision is correct, because, as an official of the United States, he is immune from suit when acting in his official capacity.

ARGUMENT

THE DISTRICT COURT CORRECTLY DISMISSED THE COMPLAINT FOR FAILURE TO SET FORTH A CLAIM UPON WHICH RELIEF COULD BE GRANTED. FURTHER, APPELLANT HAS FAILED TO SHOW THAT THE UNITED STATES, WHICH, AS THE SOVEREIGN, CAN BE SUED BY CONSENT ONLY, HAS GIVEN ITS CONSENT TO BE SUED.

THE DISTRICT DIRECTOR OF INTERNAL REVENUE, AS AN OFFICIAL OF THE UNITED STATES AND ACTING IN HIS OFFICIAL CAPACITY, IS IMMUNE FROM SUIT

Although the District Court did not set forth its reasons for dismissing the complaint without prejudice (I-R. 20), it is clear that it did so because the appellant's complaint failed to set forth a claim upon which relief could be granted. (II-R. 13).

Rule 8(a)(2) of the Federal Rules of Civil Procedure lays down that a complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." This Court has stated the requirements of Rule 8(a)(2) in the following terms (*Patten v. Dennis*, 134 F. 2d 137, 138 (1943)):

The requirements of a complaint may be stated, in different words, as being a statement of facts showing * * * (2) ownership of a right by plaintiff; (3) violation of that right by defendant; (4) injury resulting to plaintiff by such violation; * * *.

The Supreme Court has stated that the complaint "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957).

The appellant's complaint appears to center around the fact that the District Director of the Internal Revenue Service on September 8, 1967, levied upon a pay check due his wife from McGraw Edison Company. (I-R. 3, 10-11.) Although not a part of the record herein, the records of the Internal Revenue Service show that this collection was made in connection with the 1966 Federal income tax return, which the appellant and his wife filed jointly—thus making each jointly and separately liable for the entire amount of tax there shown by them to be due (Section 6013(d)(3) of the 1954

Internal Revenue Code, Appendix, *infra*). Further the Service's records show that this collection was in all respects in conformity with the procedures prescribed in the law. Indeed, the appellant makes no allegation that the collection procedures were not in fact followed. Rather, his complaint seems to be based upon the mistaken belief that the collection in question had some connection with the matters then and now pending before this Court in *Barkley v. Commissioner*, No. 22061, in which the appellant is litigating his individual tax liability for the year 1964¹. At the hearing below at which the appellant's complaint was dismissed, the District Court perceived this misunderstanding on the part of the appellant and attempted to explain it to him. (II-R. 10, 11, 13.)

The Internal Revenue Code of 1954, Section 7422, Appendix, *infra*, provides the sole method by which a taxpayer may, after a tax for a given tax year has been paid or collected, contest the legality of the collection and seek its refund. As a prerequisite to such a suit, the taxpayer must file a claim for refund with the appropriate District Director, stating the basis upon which refund is thought to be proper. If a refund is sought, this statutorily prescribed avenue remains open and must be pursued as the sole remedy allowed

¹ Appellant fails to realize that each taxable year is a separate taxable period. Thus disputes as to one taxable year do not bar the enforcement of taxes for other taxable years. Section 1 of the Internal Revenue Code, Appendix, *infra*, lays down that a tax will be imposed upon income at a given rate for each year. Sections 6201, 6301, and 6331 of the Internal Revenue Code of 1954, Appendix, *infra*, give the Secretary of the Treasury or his delegate the power to make an assessment for taxes and to seize the property of the taxpayer when he refuses to pay his taxes. The power conferred by Section 6331 of that Code to seize the taxpayer's property upon his refusal to pay the tax was held not to violate the due process clause of the Fifth Amendment. *Springer v. United States*, 102 U.S. 586, 593-594 (1881). Sections 301.6201-1, 301.6301-1, and 301.6331-1 of the Treasury Regulations on procedure and administration (1954 Code) lay down that the District Director of Internal Revenue is the Secretary of the Treasury's delegate to make the assessment and to issue the notice of levy.

to the taxpayer by law. The appellant has not followed the prescribed avenue herein.

The appellant has no standing in any event to complain of the collection from his wife. Since the levy was solely upon funds belonging to her, the appellant has failed to allege or show any injury to himself from the event in question. Hence, if there were any available cause of action growing out of the collection by levy, the appellant's wife would be the only party having the right to pursue it.

In order to state a claim against the United States, the appellant must show that one of its agents, acting within the scope of his duties or under the color of his office, violated a right of the appellant, which caused damage to him. *Whiteside v. United States*, 93 U.S. 247, 257 (1876). The appellant has failed to allege any injury to himself or to show wherein any specific act of any of the named appellees² was in violation of a constitutional right³ or in contravention of prescribed statutory procedures. Therefore, the complaint fails to show a claim upon which relief can be granted.

Additionally, we point out that the court has no jurisdiction over the United States unless the party who institutes the suit against it shows that it has given its

2 The District Director is in any event immune from suit for acts performed in the scope of his official duties. *Bershad v. Wood*, 290 F. 2d 714 (C.A. 9th, 1961). See also, *S & S Logging Co. v. Barker*, 366 F. 2d 617 (C.A. 9th, 1966); and *O'Campo v. Hardisty*, 262 F. 2d 621 (C.A. 9th, 1958). Inasmuch as the District Director is required by law to make assessments for federal income taxes and to levy on the taxpayer's property when the taxes due are not paid, he was acting within the scope of his official duties when he seized the appellant's wife's pay check.

3 The Sixteenth Amendment of the Constitution gives to the Congress the power to impose taxes upon incomes. The ability of the Government to collect taxes with deliberate speed is essential to its existence. *Providence Bank v. Billings*, 4 Pet. 514, 560 (1830). Its ability to collect taxes is not in conflict with the provision of the Fifth Amendment of the Constitution, which says that the Government must pay just compensation when it seizes property. *Brushaber v. Union Pac. R.R.* 240 U.S. 1, 24 (1916).

consent to be sued. In *United States v. Clarke*, 8 Pet. 436, 443-444 (1834), Chief Justice Marshall said:

As the United States are not suable of common right, the party who institutes such suit must bring his case within the authority of some act of Congress, or the court cannot exercise jurisdiction over it.

See also *United States v. Lee*, 106 U.S. 196 (1882); and *Jules Hairstylists of Maryland v. United States*, 268 F. Supp. 511, 514 (Md., 1967), affirmed *per curiam* F. 2d (C.A. 4th, 1968). When the appellant fails to show that the United States has given its consent to be sued, dismissal of the action is required as to the United States. *Stout v. United States*, 229 F. 2d 918 (C.A. 2d, 1956), certiorari denied, 351 U.S. 982 (1956). As we have shown, the only authorization for a suit against the United States in connection with the collection of taxes, is a suit for refund under Section 7422, following rejection by the District Director of an appropriate and timely claim for refund. This does not purport to be such an action: no other authority is cited.

CONCLUSION

For the reasons given above, the dismissal of the appellant's complaint should be affirmed.

Respectfully submitted,
MITCHELL ROGOVIN,
Assistant Attorney General.

LEE A. JACKSON,
WILLIAM A. FRIEDLANDER,
DAVID ENGLISH CARMACK,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

April, 1968.

Of Counsel:

EDWARD E. DAVIS,
United States Attorney.

RICHARD C. GORMLEY,
Assistant United States Attorney.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: 19th day of April, 1968.

RICHARD C. GORMLEY
Assistant United States Attorney

APPENDIX

Internal Revenue Code of 1954:

SEC. 1. TAX IMPOSED.

(a) [as amended by Sec. 111(a), Revenue Act of 1964, P.L. 88-272, 78 Stat. 19] *Rates of Tax on Individuals.* —

* * * *

(2) *Taxable years beginning after December 31, 1964.*—In the case of a taxable year beginning after December 31, 1964, there is hereby imposed on the taxable income of every individual (other than a head of a household to whom subsection (b) applies) a tax determined in accordance with the following table:

* * * *

(26 U.S.C. 1964 ed., Sec. 1.)

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

* * * *

(d) *Definitions.* — For purposes of this section —

* * * *

(3) if a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

(26 U.S.C. 1964 ed., Sec. 6013.)

SEC. 6201. ASSESSMENT AUTHORITY.

(a) *Authority of Secretary or Delegate.* — The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) *Taxes shown on return.*—The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

* * * *

(26 U.S.C. 1964 ed., Sec. 6201.)

SEC. 6301. COLLECTION AUTHORITY.

The Secretary or his delegate shall collect the taxes imposed by the internal revenue laws.

(26 U.S.C. 1964 ed., Sec. 6301.)

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or Delegate.* — If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. * * *

* * * *

(26 U.S.C. 1964 ed., Sec. 6331.)

SEC. 7442. CIVIL ACTIONS FOR REFUND.

(a) *No Suit Prior to Filing Claim for Refund.* — No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

(b) *Protest or Duress.*—Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

* * * *

(26 U.S.C. 1964 ed., Sec. 7442.)

Treasury Regulations on Procedure and Administration (1954 Code)

§301.6201-1 *Assessment authority.*

(a) *In general.* The district director is authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law. The district director is further authorized and required, and the director of the regional service center is authorized, to make the determinations and the assessments of such taxes. However, certain inquiries and determinations are, by direction of the Commissioner, made by other officials such as assistant regional commissioners. The term “taxes” includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the district director and the director of the regional service center to make assessments includes the following:

(1) *Taxes shown on return.* The district director or the director of the regional service center shall assess all taxes determined by the taxpayer or by the district director or the director of the regional service center and disclosed on a return or list.

* * * *

(26 C.F.R., Sec. 301.6201-1.)

§301.6301-1 *Collection authority.*

The taxes imposed by the internal revenue laws shall be collected by district directors of internal revenue. * * *

(26 C.F.R., Sec. 301.6301-1.)

§301.6331-1 *Levy and distraint.*

(a) *Authority to levy* — (1) *In general.* If any person liable to pay any tax neglects or refuses to pay such tax within 10 days after notice and demand, the district director to whom the assessment is charged or, upon his request, any other district director may proceed to collect the tax by levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to such person or on which there is a lien provided by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such tax. As used in section 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with any costs and expenses that may accrue in addition thereto. For exemption of certain property from levy, see section 6334 and the regulations thereunder. Property subject to a Federal tax lien, which has been sold or otherwise transferred by the taxpayer, may be seized in the hands of the transferee or of any subsequent transferee. Levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, such as, for example: receivables, bank accounts, evidences of debt, securities, and accrued salaries, wages, commissions, and other compensation.

* * * *

(26 C.F.R., Sec. 301.6331-1.)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UTHER G. BARKLEY
BRIEFS
V.
JAMES D. PATTERSON, DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE, LASTER G.
OFFICE, CHIEF COUNSEL OF INTERNAL REVENUE
SERVICE, COMMISSIONER OF INTERNAL REVENUE
SERVICE, UNITED STATES OF AMERICA.
RESPONDENTS.

DOCKET NO. 22540
MARCH 18, 1968

OFFICE OF THE CLERK

Dear Mr. Luck, Esquire

I Certify that, in connection with the preparation of this Brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing Brief is in full compliance with those Rules.

PETITIONER, Certify, that Petitioner mailed three (3) copies of the deficient letters of the above case, to the above Respondents, March 18, 1968.

Yours Very Truly

Arthur G. Barkley
Arthur G. Barkley
4145 N. Mitchell St.
Phoenix, Arizona

STATE OF ARIZONA
COUNTY OF MARICOPA

ss.

this instrument was acknowledged before me this 18 day of March, 1968, by Arthur G. Barkley
a witness whereof I herewith set my hand and official seal.

Clella Riley, NOTARY PUBLIC

My Commission Expires Oct. 15, 1971

FILED

MAR 25 1968

WM. B. LUCK, CLERK

UNITED STATES DEPARTMENT OF JUSTICE

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Arthur W. ...
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STATE OF ARIZONA
COUNTY OF MARICOPA
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THOMAS G. BARKLEY
BRIEFS.

DOCKET NO. 22540

V.

GEORGE D. PATTERSON, DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE. LESTER R.
METZ, CHIEF COUNSEL OF INTERNAL REVENUE
SERVICE. COMMISSIONER OF INTERNAL REVENUE
SERVICE. UNITED STATES OF AMERICA.
RESPONDENTS.

MARCH 18, 1968

IN REGARDS TO YOUR RUL'S 18, 19 and 39.

TEST: UNITED STATES COURT OF CLAIMS, STATUTES RULES, STULL.
VII SPECIAL JURISDICTION ACTS.

ARTICLE 202. PAGE 587.

A STATUTES giving the Court authority to "hear and determine"
claim to "judgment", with rights of appeal, and the absence of res-
trictive clause, held to subject the Government to liability, through
the claim be founded on the negligence of public agents, Walton, 24-372.

PLAINTIFF, request the relief of injury from the United States
America, for the violation of the Purpose (or Spirit) of Amendments,
the Constitution of the United States of America, ON August 29,
1967 through September 1967.

IN THE TRANSCRIPT OF RECORD, from page 5, through 14, it shows
that the Internal Revenue Service acted with out a Due process of law
and violated the "Cherished", Bill of Rights, against the Plaintiff.

IN THE TRANSCRIPT OF RECORD, page 15, their Motion to Dismiss.
find in the Digest of U.S. Court of Claims. Statutes Rules, Stull.
page 198. Sec. 1. The Constitutional duty of the Government to make
compensation for private property taken for public use raises an implied
promise to do so, and for such property the owner should receive its
fair value. GRANT, 1-41. SECTION 10b, page 149, same Statutes, states,
the Government is not bound by the act or declaration of its agents,
unless it manifestly appears that he acted within the scope of his auth-
ority, or was employed in his capacity as a public agent to do the act or
make the declaration for it. WHITESIDE et al 93 U.S. 247 aff. 8-532.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOCKET NO. 12345
MAY 15, 1955

THE UNITED STATES OF AMERICA
vs.
JAMES EARL RAY
APPELLANT
vs.
THE UNITED STATES OF AMERICA
APPEELEE

IN REPLY TO YOUR LETTER OF MAY 10, 1955

YOUR HONORABLE COURT HAS RECEIVED THE FOLLOWING
OFFICIAL DOCUMENTATION:

DATE: MAY 10, 1955

The following is a copy of the report of the
Special Agent in Charge, Chicago, Illinois, dated
May 10, 1955, and is being furnished to you for
your information. The report contains information
regarding the activities of the subject, James Earl Ray,
in Chicago, Illinois, during the period from
January 1, 1955, to the present. The report
indicates that the subject has been active in
various organizations and has been in contact
with several individuals who are known to be
active in the same organizations. The report
also indicates that the subject has been seen
in various places in Chicago, Illinois, during
the period mentioned above.

The following is a copy of the report of the
Special Agent in Charge, Chicago, Illinois, dated
May 10, 1955, and is being furnished to you for
your information. The report contains information
regarding the activities of the subject, James Earl Ray,
in Chicago, Illinois, during the period from
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indicates that the subject has been active in
various organizations and has been in contact
with several individuals who are known to be
active in the same organizations. The report
also indicates that the subject has been seen
in various places in Chicago, Illinois, during
the period mentioned above.

SAME STATUTES, page 235. Sec. 223. WHERE property to which the United States asserts no title is taken by their agents, pursuant to act of Congress, as private property for the public use, the Government is under an implied obligation to make compensation therefore, owner's claim is one arising out of implied contract. Plaintiff states here, that the Cherished Bill of Rights and his Tax Dollar is free Peoples own private property, SAME STATUTES, page 235. Sec. . though the Government is not responsible for trespass of its officers who illegally seize property of a citizen, yet if the proceeds go into the Treasury the Government is liable on implied contract this Court has jurisdiction. Plaintiff states here, that the Cherished Bill of Rights, and his Tax Dollar is the free People own private contract guaranteed by the United States Government since 1791. and if any Person, company, Department, or Organization infringe upon that Person private property, or his private contract, THE UNITED STATES SUPREME COURT maintains for that purpose. and Congress can not make any laws denying free People of those T.O rights.

PLAINTIFF, request the relief of injury suffered in this violation, fair share of this Country growth-wealth from the beginning of the Cherished, Bill of Rights, 1791 through 1967, or an estimated damage of Hundred Million Dollars.

Auther G. Barkley
 Auther G. Barkley
 4145 North Mitchell Street
 Phoenix, Arizona

STATE OF ARIZONA
 COUNTY OF MARICOPA } ss.
 This instrument was acknowledged before me this 18 day of March, 1968, by Auther G. Barkley
 In witness whereof I hereunto set my hand and official seal.
Chella Riley, NOTARY PUBLIC

My Commission Expires Oct 11, 1970

... property in state ...
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WALTER G. BARKLEY
PETITIONER
REPLY BRIEFS.

V.

ROBERT D. PATTERSON, DISTRICT DIRECTOR
OF INTERNAL REVENUE SERVICE. LESTER R.
RETZ, CHIEF COUNSEL OF INTERNAL REVENUE
SERVICE. COMMISSIONER OF INTERNAL REVENUE
SERVICE. UNITED STATES OF AMERICA.
RESPONDENTS

) DOCKET NO. 22540

) APRIL 23, 1968

PETITIONER, Object to the Respondents Brief of April 19, 1968
of the above name case. It is misleading, and a Conspiracy to avoid
justice. When started, there was one Counsel for the Respondents,
now there six (6).

IN the Appellees Brief, on pages 4, 5, and 6. Appellees speak
of the tax dollar as of only a year by year system of our Government.
Appellant stands, that his tax dollar is a living body of his "Cher-
ished Bill of Rights" from the beginning to the end. and in 1964, when
Appellant filed with the Internal Revenue Service, Appellant declared
Plea to the Internal Revenue Service, Requesting that Appellant tax
dollar to stand for Appellant Constitutional Rights which have been
denied to Appellant by the State and Federal Government. and on pages
10 and 11 of Appellant transcript of record shows that the Internal
Revenue Service seized that portion of the body of the case which is
pending in court. The Internal Revenue Service acted with out a Due
process of law which violated the PURPOSE (OR SPIRIT) of Amendmen ts
of the Constitution of the United States of America.

ON page six (6) of Appellees Brief, Appellees states that the
Appellant wife should be the one to file suit. On page nine (9) of
Appellant transcript of record shows that on September 29, 1966 the
Tax Court granted the Appellant as the sole responsible person and
not of his wife.

ON pages 6 and 7 of Appellees Brief, Appellees states that the
United States has to give consent to be sued, on pages one and two

APR 25 1968

STATE OF MICHIGAN
THE SUPREME COURT

1928

STATE OF MICHIGAN
THE SUPREME COURT
WESTLAND, MICHIGAN

PLAINTIFF,
vs.
THE STATE OF MICHIGAN
DEFENDANT.

In this case, the plaintiff seeks to have the defendant...
The court has concluded that the defendant is not liable...
The plaintiff's claims are dismissed with costs to the defendant.

FILED

f the Appellant transcript of record which states the Amendments
f the Constitution and the Great Men on the Constitution which
peaks different to Appellees opinion. Charles A. Dana, Great Man
n the Constitution. states, In order to understand the theory of
ne American Government, the most serious, calm, presistent study
ould be given to the Constitution of the United States. I dont
ean learning it by heart, committing it to memory. What you want
s to understand it, to know the principles at the bottom of it.

Congress can make no laws to deny the free people of these
ited States of America their rights to request their Tax Dollar to
and for their Constitutional Rights, and for their Constitutional
ights to stand for their Tax Dollar. and when any Person, Company,
rganization or Department violates these Rights, the Appellant
reserves the right to meet them face to face in Court and receive
dress of injury by him so sustained.

United States Supreme Court. The highest Court in the United
ates, established by the Constitution and organized by Congress
nder the Judiciary Act of September 24, 1787. As the highest trib-
nal, the Supreme Court receives the final pleas of debatable or
satisfactory judgements of lower courts: has power to judge all
ases arising under the laws of the United States, that seems to
nflict with the Constitution.

IN SUPPORT THEREOF: Appellant respectfully show unto the
urt. The above-entitled case is now at issue.

PETITIONER request that the above name RESPONDENTS, come
to Court and fight, or give up.

CERTIFICATE: I certify that, in connection with the prep-
ation of this brief, I have examined Rules 18, 19, and 39 of the
ited States Court of Appeals for the Ninth Circuit, and that, in
opinion, the forgoing brief is in full compliance with those rules.

Auther G. Barkley
Auther G. Barkley
4145 N. Mitchell St.
Phoenix, Arizona 85014

OF ARIZONA } ss.
Y OF MARICOPA
ument was acknowledged before me this 23 day of
... 1968, by Auther G. Barkley
o witness I herewith set my hand and official seal.
P. P. P. P. P.
NOTARY PUBLIC